

Remarks

Applicant respectfully traverses the restriction requirement.

The Examiner is respectfully reminded that in order to support a requirement for a divisional in a U.S. national phase PCT entry (35 U.S.C. 371) the framework of the statutes and rules **require** the USPTO Examiner to make an Agency determination that there is a lack of Unity of Invention, according to the PCT Articles, Rules (13) and Administrative Instructions including Annex B (see *Caterpillar Tractor Co. v. Commissioner of Patents and Trademarks*, 650 F. Supp. 218, 231 USPQ 590 (E.D. Va. 1986)). The Examiner has clearly failed to fulfill the above **requirement** in the action dated November 16, 2009 and the restriction requirement is improper.

Hence, Applicants respectfully requests withdrawal of the Examiner's restriction/election requirement in the instant case.

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